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June 19, 2012

232474

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423

ENTERED
Office of Proceedings
June 19, 2012
Part of
Public Record

RE: Docket No. 42133, *Sierra Railroad Company and Sierra Northern Railway v. Sacramento Valley Railroad Company, LLC, McClellan Business Park, LLC, and County of Sacramento*

Dear Ms. Brown:

Enclosed for efiling is the Reply Evidence and Arguments of Sacramento Valley Railroad Company, LLC, McClellan Business Park, LLC, and the County of Sacramento.

Thank you for your assistance. If you have any questions, please call or email me.

Sincerely yours,

Louis E. Gitomer
Attorney for: Sacramento Valley Railroad Company, LLC, McClellan Business Park, LLC, and the County of Sacramento

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. 42133

SIERRA RAILROAD COMPANY AND SIERRA NORTHERN RAILWAY
v.
SACRAMENTO VALLEY RAILROAD COMPANY, LLC
MCCLELLAN BUSINESS PARK, LLC
AND COUNTY OF SACRAMENTO

REPLY OF SACRAMENTO VALLEY RAILROAD COMPANY, LLC, MCCLELLAN BUSINESS PARK, LLC, AND COUNTY OF SACRAMENTO TO COMPLAINT

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Dated: June 19, 2012

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Sacramento Valley Railroad Company, LLC ("SAV"), McClellan Business Park, LLC (McClellan"), and the County of Sacramento ("Sacramento" and with SAV and McClellan, jointly referred to as "Defendants") submit their responsive evidence and argument to the Opening Evidence and Argument filed on May 23, 2012 (the "Opening") by Sierra Railroad Company ("Sierra") and Sierra Northern Railway ("SERA" and with Sierra jointly referred to as "Complainants").

Defendants have not engaged in unreasonable practices and are not required to seek adverse abandonment or discontinuance authority in order for SERA to terminate operations in the McClellan Business Park (the "Park"). Rather, SERA, not Defendants, was required to seek the discontinuance pursuant to its licensing agreement with McClellan and 49 U.S.C. § 10903. Moreover, neither Sacramento nor McClellan has held itself out to provide common carrier railroad transportation for compensation nor has either provided common carrier railroad transportation for compensation. Additionally, neither Sacramento nor McClellan can

unreasonably interfere with the operations over the railroad track in the Park, and therefore they should not be deemed common carriers. Indeed, Sacramento and McClellan have not interfered with the common carrier service provided to the shippers in the Park. For these reasons, Defendants urge the Board to find in favor of Defendants with regard to SERA's Complaint, and dismiss or otherwise discontinue these proceedings.

BACKGROUND

In 1995, the McClellan Air Force Base (the "Base") was ordered by the Department of Defense to be closed. As portions of the Base were vacated, the Base properties, including seven miles of railroad tracks within the facility, were conveyed to Sacramento. In 2001, Sacramento determined that its interest in developing the Base properties for commercial purposes would benefit from the introduction of common carrier rail service. Sacramento chose Yolo Shortline Railroad Company ("Yolo") (now, SERA)[1] to render common carrier rail service within the Park and entered into a License and Operating Agreement (the "License") with Yolo in 2001.[2] As explained in the verified statement of Mr. Frank Myers (the "Myers VS") attached as Exhibit 1, neither Sacramento nor McClellan were sophisticated in agreements concerning railroad operations and relied upon Yolo, the existing rail carrier.

Sacramento did not have any ownership or any other interest in Yolo (and does not have an ownership or any other interest in SERA). The License did not require Yolo to obtain common carrier authority from the Board. However, "Yolo elected to render service on the Line as a rail carrier subject to the Board's jurisdiction." Opening at 3.

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[1] *See Sierra R.R.—Acquis. of Control Exemption—Yolo Shortline R.R.*, FD 34351 (STB served June 11, 2003). In 2003, Yolo was renamed the Sierra Northern Railway.

[2] *Yolo Shortline R.R.—Acquis. & Operation Exemption—Cnty. of Sacramento, Cal.*, FD 34018 (STB served Mar. 27, 2001) ("*FD 34018*").

The License granted Yolo exclusive occupancy and operating rights on all of the operating trackage at the Park during the term of the License. First Yolo, then SERA, rendered rail service on the line from 2001 to 2008. In the meantime, Sacramento contracted with McClellan to develop and operate the Park. The full relationship between Sacramento and McClellan is explained in the Myers VS.

On August 31, 2007, McClellan notified SERA in writing that it would not renew the License, which by its terms would be renewed annually unless terminated with six months' notice, and the agreement would be terminated effective February 29, 2008. On October 11, 2007, McClellan issued a Request for Proposal ("RFP") to four bidders including Patriot Rail and SERA for the rendering of rail service to the Park. The contract subsequently was awarded to SAV.[3]

Sierra asserts that SERA remains a rail carrier authorized to provide service on the track in the Park and that none of the Defendants has sought an adverse discontinuance of service from the Board to terminate SERA's Board authority to operate on the track. Sierra asserts that, notwithstanding that SERA continues to be a rail carrier authorized by the Board to operate in the Park, Defendants will not allow SERA into the Park to fulfill its common carrier obligation. Sierra alleges it is an unreasonable practice for Defendants to deny SERA the right to operate on McClellan's seven miles of railroad tracks, on the one hand, and, on the other hand, fail to file a third-party or adverse discontinuance application to terminate SERA's operating authority over

[3] *See Sacramento Valley R.R.—Operation Exemption—McClellan Bus. Park LLC*, FD 35117 (STB served Feb. 14, 2008). SAV's parent company, Patriot Rail Corp. ("Patriot"), and Sierra are currently involved in litigation before the U.S. District Court for the Eastern District of California. Patriot filed suit against Sierra seeking to recover hundreds of thousands of dollars in damages as the result of expending significant amounts of time and costs in conducting the due diligence for the contemplated transaction as well as for the cost of drafting numerous formal written contracts that Sierra repeatedly rejected. Sierra then filed a baseless counterclaim against Patriot.

those tracks. Sierra also alleges that Sacramento and McClellan are rail carriers subject to the Board's jurisdiction.

ARGUMENT

Defendants have not engaged in any unreasonable practices by failing to seek a discontinuance of SERA's service in the Park as Defendants are not required to seek such adverse abandonment or discontinuance of service.

SERA contends that Defendants must seek adverse discontinuance of service to terminate SERA's operation in the Park because SERA had an "exclusive" right to serve the Park. SERA also contends that the Defendants are not permitting SERA access to the Park. Both of these premises underlying SERA's claim for relief are wrong.

Under the Section 1.1 of the License, Yolo was granted "the exclusive license" to serve the Park. However, Yolo was not granted a permanent license. Indeed, the License "shall continue in full force and effect for a period of five (5) years and year to year thereafter." Section 9.1. Yolo signed the License that provided that the License "may be terminated, without cause, by written notice given by either party to the other" on six months advance notice. License Section 9.4. Yolo also agreed to remove its property from the Park upon termination of the License. Section 15.1. Hence, the "exclusive license" only existed during the term of the License. Following McClellan's timely notice of termination, SERA's "exclusive license" terminated on February 29, 2008.

The second basis for relief is also false. McClellan issued a Request for Proposal on October 11, 2007 to four railroads or railroad holding companies, including Patriot Rail and Sierra. Patriot Rail submitted a bid without using information provided by Sierra during the

negotiations.[4] Sierra also submitted a bid. McClellan selected Patriot Rail. Upon winning the bid, Patriot Rail created a new subsidiary, SAV.

SAV filed a notice of exemption on January 29, 2008 ("SAV NOE") to operate the 7-mile line in the Park.[5] Not knowing whether SERA had complied or would comply with the requirements of Section 15.1 of the License, SAV stated that:

> SAVR understands that Yolo's successor has been asked by MBP to vacate the Line, but may or may not have filed for abandonment authority with the Board at the time this notice is filed. MBP has asked SAVR to be prepared to commence operations on March 1, 2008. SAVR does not know what Yolo's successor's response will be and if it will oppose SAVR's notice in this proceeding. SAVR wants to meet the needs of MBP and the shippers on the Line in McClellan Park. SAVR is willing to enter an operational protocol with Yolo's successor, if that becomes necessary, in order to meet the needs of MBP. SAV NOE at 5.

This offer from SAV has not been withdrawn. More importantly, in more than four years since SAV made the offer, Sierra has not even once asked SAV to enter an operating protocol, nor has any shipper served by SAV ever asked to be served by SERA. Indeed, SERA voluntarily withdrew from operating in the Park on February 29, 2008 and removed all of its equipment.

To the best of Defendants' knowledge, the shippers in the Park have not asked SERA to provide common carrier service and have not complained that SERA is not providing rail service in the Park. Indeed, it appears that the shippers are very satisfied with SAV's rail service. See the verified statement of Richard McGowan ("McGowan VS") attached as Exhibit 2.

There is no valid rationale underlying SERA's claim that Defendants must file an adverse discontinuance to terminate SERA's right to serve the Park. First, SERA's "exclusive right" has

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[4] The issue of whether Patriot used such information is to be resolved in the Court Case. Whether Patriot used such information in its bid is not relevant to the unreasonable practice complaint before the Board.

[5] *Id.*

been terminated with the License. Second, SERA has not been precluded from the Park. SAV offered a protocol and SERA has not accepted that offer. SERA voluntarily left the Park without protest.

As described in the attached Myers VS, McClellan notified SERA on August 31, 2007 that the License for SERA to operate in the Park would be terminated on February 29, 2008. On February 29, 2008, SERA **voluntarily** began to comply with Section 15.1 of the License which required that "Licensee [SERA] shall, at Licensee's sole expense, remove its equipment, personnel, and other property from Licensor's premises." SERA removed its equipment, personnel, and its physical other property from the Park. As testified by Mr. Myers, prior to February 29, 2008, Mr. Frank Myers, Senior Vice President of McClellan, and Mr. Mike Hart, President and CEO of Sierra, had several communications, including an acknowledgement by Mr. Hart that SERA was "preparing to file the cessation notice with the [S]urface [T]ransportation [B]oard." Myers VS. Mr. Hart responded that "we will be happy to provide you with a copy of any filings we make." After an exchange of emails, on February 5, 2008, Mr. Hart notified Mr. Myers that "I have received confirmation from counsel that we are not required to make any filings regarding the Patriot action."

The clear language of the License required SERA to remove **all** "other property" from the Park, not just the tangible property. Being unsophisticated as far as railroad regulation at the time the License was entered into, Sacramento concluded that section 15.1 would fully terminate SERA's presence in the Park when the License was terminated based on the clear meaning of the "other property" language. The Board has permitted the sale and retention of the common

carrier obligation.[6] Defendants contend that the authority granted by the Board is certainly property as defined by the Eighth Edition of Black's Law Dictionary at 1252 to be "The right to possess, use, and enjoy a determinate thing (either a tract of land or a chattel)." The License granted SERA the right to use the rail facilities in the Park. Indeed, the common carrier authority received by Yolo is also intangible property, which is defined as "Property that lacks a physical existence." Black's Law Dictionary at 1253. Hence under Section 15.1 of the License, upon termination, at its own cost, SERA was required to terminate the common carrier obligation granted to Yolo in *FD 34018*.[7]

SERA does not have an "exclusive" right to operate in the Park. SERA voluntarily stopped operating in the Park, and under the License SERA has the obligation to remove its property from the Park at its own cost, which includes the common carrier authority granted by the Board. The Defendants do not have any obligation to file an adverse discontinuance of service on behalf of SERA. SERA must file its own discontinuance of service under 49 U.S.C. §10903 to comply with its contractual commitments and to remove its property from the Park.

Sacramento and McClellan are not rail carriers subject to the jurisdiction of the Board.

SERA provides two arguments to justify that Sacramento and McClellan are rail carriers subject to the jurisdiction of the Board.

First, SERA contends that Sacramento and McClellan have obtained authority from the Board (Opening at 2) to provide rail service in the Park, and erroneously rely on precedent where

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[6] *Massachusetts Coastal Railroad, LLC—Acquisition—CSX Transportation, Inc.*, STB Finance Docket No. 35314 (STB served March 29, 2010); *Massachusetts Department of Transportation—Acquisition Exemption—Certain Assets of CSX Transportation, Inc.*, STB Docket No. FD 35312 (STB served May 3, 2010) ("*MassDot*").

[7] For decades the Interstate Commerce Commission authorized the purchase and sale of motor carrier operating rights, a clear indication that authority granted by the ICC and the Board is property.

the owner of the property is a rail carrier that received authority from the Board. When Sacramento acquired the Park, the track in the Park was excepted track, not subject to the Board's jurisdiction for entry or exit. See 49 U.S.C. §10906. Sacramento and McClellan never sought or obtained authority from the Board to provide common carrier rail service in the Park.

Second, SERA contends that the License and the Railroad License and Operating Agreement dated as of February 27, 2008 between McClellan and SAV (the "2008 License") allow Sacramento and McClellan to unreasonably interfere with railroad operations in the Park. The License and 2008 License govern the relation between Sacramento and McClellan, as licensor, and SERA and SAV, as licensees, respectively. SERA and SAV were granted licenses to access the Park to provide rail service.

The precedent cited by Sierra does not apply to Sacramento and McClellan. The cases cited by SERA fall into one of three categories: (1) cases where a non-carrier has sought authority from the Board to operate an existing rail line, thus voluntarily becoming a common carrier; (2) cases where whether the owner of a private track was found to be a carrier or to have a residual common carrier obligation depended on the amount of control the owner/lessor had over the railroad providing common carrier service; and (3) cases where the parties before the Board did not provide enough information for the Board to determine the existence of a common carrier or residual common carrier obligation.

SERA attempts to place Sacramento and McClellan into the first category to support SERA's claim that Sacramento and McClellan have a residual common carrier obligation. Contrary to the actions of Sacramento and McClellan, in each of the cited cases the state, state agency, or non-carrier asked the Board or the ICC for operating authority to become a common

carrier.[8] In the cases cited by Sierra, the state, state agency or non-carrier did not assert that they were not subject to a residual or common carrier obligation. Unlike in the cases cited, Sacramento and McClellan did not seek authority to become a common carrier or to operate a railroad.

In *North Carolina Ports*, the ICC authorized the North Carolina Ports Railway Commission ("NCPRC") to acquire and operate rail lines at the port facilities. Eventually railroad operators were brought in to operate the lines but the ICC found that NCPRC had a residual common carrier obligation stemming from the original acquisition of authority to operate the lines. The ICC on its own motion exempted the NCPRC from the requirements of 49 U.S.C. Subtitle IV under what is now 49 U.S.C. §10502. That exemption extended only to the NCPRC.[9]

In both *Clark Shortline* and *Southwind* the acquiring entities sought to acquire the common carrier obligation. The May 14, 1998 decision addressed the labor unions attempt to show that the ICC did not have jurisdiction to exempt the transactions but the Board affirmed the acquiring entities positions that they were common carriers subject to the Board's jurisdiction.

In *Allegheny and Pittsburg* non-carrier subsidiaries of a railroad sought authority to acquire the physical assets of the line and a residual common carrier obligation over the line.

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[8] *Carolina Rail Service, Inc.—Exemption—Acquisition and Operation and Trackage Rights—The Ports Railway Commission of the State of North Carolina*, ICC Finance Docket No. 30908 (ICC served Oct. 1, 1986) ("*North Carolina Ports*"); *Clark Shortline Railroad Company—Acquisition and Operation Exemption—Indiana Port Commission*, ICC Finance Docket No. 32112 (ICC served Aug. 13, 1992) ("*Clark Shortline*"); *Southwind Shortline Railroad Company—Acquisition and Operation Exemption—Indiana Port Commission*, ICC Finance Docket No. 32113 (ICC served Aug. 13, 1992) ("*Southwind*"); *Allegheny & Eastern Railroad, LLC—Acquisition Exemption—Buffalo & Pittsburgh Railroad, Inc.*, STB Finance Docket No. 34448, (STB served Jan. 22, 2004) ("*Allegheny*"); *Pittsburg & Shawmut Railroad, LLC—Acquisition Exemption—Buffalo & Pittsburg Railroad, Inc.* STB Docket No. 34449 (STB served Jan. 22, 2004) ("*Pittsburg*").

[9] *See North Carolina Ports Railway Commission–Petition for Declaratory Order or Prospective Abandonment Exemption*, ICC Finance Docket No. 31248 (ICC served Sept. 30, 1988).

Under the second type of cases, SERA relies on *Anthony Macrie—Continuance in Control Exemption—New Jersey Seashore Lines, Inc.*, STB Finance Docket No. 35296 (STB served Sept 29, 2009) ("*Anthony Macrie* ") for the proposition that a proposal to convert private track into a regulated line of railroad places a residual common carrier obligation on the owner of the track. That however is not the Board's finding in *Anthony Macrie*. The language SERA relies on was a request to obtain more information from the parties to the proceeding. Once the Board received all of the required information, it found that the owner/lessor was not a common carrier, did not have a residual common carrier obligation, and did not have an obligation to seek acquisition or operating authority from the Board so long as the owner could not exercise undue control over the carrier. SERA implies that the Board found the owner/lessor was not a common carrier because the line had been abandoned prior to the owner's acquisition. The Board, however, did not state that the owner of the property would not become a common carrier because the line had been abandoned; rather the Board stated that no common carrier obligation could be conferred on the owner for simply leasing its property for rail service when the owner did not exercise undue control over the carrier's operations. The Board went on to explain that undue control meant that the owner/lessor could not (1) exercise control over railroad operations so much so that it becomes a common carrier and (2) interfere with the railroad's ability to meet its common carrier obligation. The particular agreement in this case only allowed the owner to remove the railroad for material breach.[10]

In *North Shore Railroad Company—Acquisition and Operation Exemption—PPD Susquehanna, LLC, STB Finance Docket No. 35377* (STB served April 26, 2011), the decision

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Anthony Macrie—Continuance in Control Exemption—New Jersey Seashore Lines, Inc., STB Finance Docket No. 35296 (STB corrected decision served August 31, 2010).

directed the lessor to explain why it did not seek authority from the Board to acquire an active line and why it did not believe that it had a common carrier obligation over the line. PPD had acquired an active rail line from the state. There was not enough information for the Board to determine what was going on and the Board requested additional information. Even if the Board had found that PPD had a residual common carrier obligation that would not equate to Sacramento and McClellan having residual common carrier obligation. Sacramento did not acquire an active rail line when it acquired the former Base and McClellan did not acquire an active rail line when it began managing the former Base for Sacramento.

SERA in passing mentions *Wis. Cent. v. STB*, 112 F.3d 881 (7th Cir. 1997). The Board relying on that decision stated in its April 23, 2012 decision that "The County's mere act of leasing its line to Sierra did not confer any common carrier obligation on the County." SERA uses this as a jumping off point to attempt to show that Sacramento has done more than merely lease the line.

The Licenses do not unreasonably interfere with railroad operations. SERA alleges that the License gave Sacramento and McClellan the power to interfere with SERA's operations. In determining whether the owner of railroad facilities can interfere with a railroad's operations, the Board typically takes a prospective view in advance of the proposed transaction based solely on the language in the agreement. Here, SERA had operated the Park for seven years and had the opportunity to relate to the Board its experience with the interference caused to its operations by Sacramento and McClellan. SERA did not allege any actual interference. Instead SERA selected portions of the License and 2008 License to claim interference. SERA is wrong and did not demonstrate interference.

There was a limited term in the License and 2008 License and the right to terminate the license. In both, Board authority was a necessary component of the termination of rail service. As already discussed, section 15.1 of the License required SERA to remove its property, including the common carrier obligation from the Park, requiring Board authority. In the 2008 License, termination requires Board authority under section 18. The Licensor cannot unilaterally require the rail operator to cease service under these provisions.

Sierra next contends that under section 2.1 of the License and 5.1 of the 2008 License that railroad operations can be unreasonably interfered with. But section 2.1 specifically states that "Licensor shall take all practical measures to minimize such interference." Section 5.1 of the 2008 License requires compliance with "all requirements of the STB". These provisions of the License and the 2008 License do not provide for unreasonable interference with railroad operations by the Licensor.

Sierra states that section 6.1 of the License and section 6 of the 2008 License require the railroad operator to "minimize interference with the use by the tenants of the roadway, property and facilities of Licensor." Opening at 19. Sacramento owns the property. Sacramento and McClellan do not require interference with other tenants. Instead, they seek to minimize interference as has been done in dozens of proceedings where a commuter authority acquires a line and limits the freight carrier to certain operating windows. Those operating windows have not been found to unreasonably interfere with freight operations. See *MassDot*. SAV does not find section 6 of the 2008 License to unreasonably interfere with its operations, and Sierra has provided no examples of such interference.

The License (section 23.1) and 2008 License (section 23) prohibit assignment or transfer of the railroads rights without the Licensor's permission. These provisions do not interfere with railroad operations. They merely allow the Licensor to control the party with access to its property.

Requiring the track to be maintained at FRA Class I standards or better (section 3.2 of the License and section 3.1(k) of the 2008 License) does not interfere with railroad operations. In fact, such requirements enhance operations by requiring the line to be maintained to a minimum condition. Requiring more than one locomotive on the property ensures continued service to shippers if one locomotive must be taken out of service.

Sierra next contends that the requirement that the operator of the Park be notified by the railroad operating in the Park in advance of hazardous materials shipments is also unreasonable interference. SAV has not had any hazardous material shipments interfered with by McClellan. Defendants are certain that if hazardous materials handled by SERA had been interfered with, SERA would have specified those events in the Opening. SERA has made no claim of interference in the Opening.

In a final attempt to demonstrate interference, Sierra obliquely contends that charging the equivalent of rent (section 7.1 of the License and section 3.1 and 3.2 of the 2008 License) and obtaining reports in order to audit the rental payments is interference. Actually the payment of rent by the railroad operators demonstrates independence. If Sacramento or McClellan were paying a railroad to operate in the Park, that would demonstrate additional control since Sacramento could then control the finances of the railroad. Instead, the more revenue a railroad generates, the greater the rental payment the Licensor receives, creating a substantial incentive

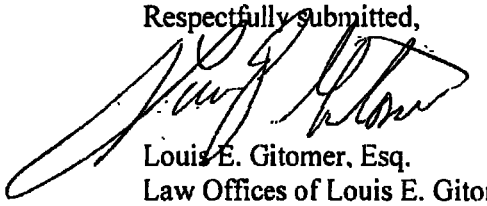
for the Licensor to allow the railroad to operate as efficiently as possible with as little outside interference as possible.

When acquired by Sacramento, the Park was not a regulated line of railroad. Sacramento and McClellan have not sought authority from the Board to acquire a line of railroad or to operate a line of railroad. Sacramento hired Yolo and McClellan hired SAV to perform common carrier operations in the Park. Those operations have continued without interruption for over 10 years, including two changes of operator – Yolo to SERA and SERA to SAV. Under the License and the 2008 License, the Licensors have not unreasonably interfered with the operations of the railroads. There have been no railroad or shipper complaints. Sacramento and McClellan do not have the power to interfere with railroad operations in the Park, without the railroad receiving Board authority to terminate service, and even then, there will be no interference as long as a replacement for the operator is in place, as was the case with SAV replacing SERA.

CONCLUSION

For the foregoing reasons, Defendants request the Board to: (1) conclude that Defendants have not violated any provision of 49 U.S.C. §§ 10702(2) or 10704(b); (2) dismiss the complaint; (3) discontinue this proceeding; and (4) award Defendants such other relief to which it is entitled.

Respectfully submitted,



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June 19, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served electronically upon:

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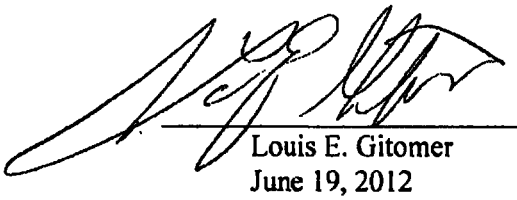

Louis E. Gitomer
June 19, 2012

EXHIBIT 1-VERIFIED STATEMENT OF FRANK MYERS

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. NOR 42133

SIERRA RAILROAD COMPANY AND SIERRA NORTHERN RAILWAY
v.
SACRAMENTO VALLEY RAILROAD COMPANY, LLC
MCCLELLAN BUSINESS PARK, LLC
AND COUNTY OF SACRAMENTO

VERIFIED STATEMENT OF FRANK MYERS

My name is Frank Myers. I am Senior Vice President of McClellan Business Park, LLC ("McClellan") and have held this position with McClellan since 2000. In 1999, McClellan was selected by the County of Sacramento ("Sacramento") to be the "master developer" to manage McClellan Business Park (the "Park") and to acquire the majority of the acreage and improvements located therein by leasehold interest and ultimately fee title transfer. The purpose of this statement is to provide background on the Park, the role of McClellan and Sacramento in the operation of the Park, the termination of the Railroad License and Operating Agreement dated as of February 6, 2001 (the "2001 License") between Sacramento and Yolo Shortline Railroad Company ("Yolo") (see Exhibit A), in response to the Opening Evidence and Arguments filed by Sierra Railroad Company ("SRC") and Sierra Northern Railway ("SERA") on May 23, 2012 (the "Opening").

BACKGROUND

The United States Air Force ("USAF") operated McClellan Air Force Base (the "Base") at the location of the Park for decades. To my actual current knowledge and without

constructive knowledge or duty of inquiry ("to my knowledge" or words to such effect), railroad service was provided to the Base by the Southern Pacific Transportation Company and the Atchison, Topeka and Santa Fe Railway Company, and their successors. Rail service within the Base was provided over spur track constructed by and owned by the USAF which, to my knowledge, was excepted from the jurisdiction of the Surface Transportation Board ("STB").

The Base Closure and Realignment Commission ("BRAC") decided that the Base should closed and the Base was closed. To my knowledge, USAF did not seek authority from the STB to stop providing rail service within the Base nor do I recall that such action was ever a consideration at such time as the track was spur track and the USAF was the only shipper using the spur track within the Base.

After the closing of the Base was announced, Sacramento desired to facilitate private commercial development of the Base and to create an opportunity for job creation that offset the resulting job loss from the closure. In addition to the 10,500 foot long airfield, the approximately 9,000,000 square feet of existing facilities located at the Base, and hotel and restaurant facilities, it was believed that the existing spur track was a minor amenity that potentially could help facilitate the commercial development and related job generation desired by Sacramento. It is my understanding that upon Sacramento being granted possessory control over the Base by the USAF, Sacramento did not seek authority to acquire the railroad track separately as it was an in place supporting amenity of the Base, the Base had never operated as a regulated carrier, and Sacramento had no desire nor was it ever contemplated that Sacramento would hold itself out to be a rail carrier. To my knowledge, Sacramento does not own any railroad locomotives or cars, Sacramento does not offer transportation pricing or service to the tenants of the Park, Sacramento does not move any railroad cars at the Park, and Sacramento

does not solicit railroad transportation at the Park. Instead, upon closure, Sacramento was a "tenant" of the USAF, as "landlord", in accordance with BRAC documentation for the entirety of the Base which remained owned by the USAF in fee (with the contractual right to ultimately acquire fee of the entity of the Base, including the in place spur track). To my knowledge, the existing spur track was not understood to be regulated by the STB until, as I understand it, Yolo decided to seek authority to operate in the Park after entering into the 2001 License.

McClellan, in its capacity as Sacramento's manager of the Base, recommended to Sacramento that a third party operator of the existing spur track within the Base be retained to provide ancillary rail service to the tenants of the leased facilities within the Base. Based upon McClellan's recommendation, Sacramento approved of the entering into of the 2001 License negotiated by McClellan with Yolo. The purpose of the 2001 License was to grant a license to Yolo to exclusively operate on the existing spur track within the Base identified therein for the term of the 2001 License and to pay rent to Sacramento for such right. Excepting general maintenance standards and repair and condition compliance with applicable laws and regulations, how Yolo conducted its business operations upon the identified spur track was subject to their discretion and not controlled by Sacramento or by McClellan as the manager for Sacramento. Sacramento is a local government municipality and, to my knowledge, is not sophisticated in operating a commercial rail service venture and, as set forth in the 2001 License, provided the selected and experienced rail service provider (Yolo) with the exclusive operating discretion on how to conduct its business operations. McClellan, in its capacity as manager for Sacramento and as the successor in interest to a majority of the Base from Sacramento, is also not sophisticated in operating a commercial rail service venture and, as set forth in the 2001 License, provided the selected and experienced rail service provider (Yolo) with the exclusive

operating discretion on how to conduct its business operations. McClellan does not own any railroad locomotives or cars, does not offer transportation pricing or service to the tenants of the Park, does not move any railroad cars at the Park, and does not solicit railroad transportation at the Park; instead, all such matters are the responsibilities and rights of the rail service provider (Yolo) pursuant to the 2001 License.

To my knowledge, the 2001 License is structured as a relatively standard real estate document, but as I now understand, not a typical railroad lease although fully negotiated by a sophisticated rail service provider (Yolo). The 2001 License does not require that Yolo specifically obtain STB authority to begin rail operations in the Park (as McClellan was not aware of any such requirement) but does require that Yolo obtain applicable permits and approvals to conduct its operations under the 2001 License which it did in satisfaction of the condition precedent to the effectiveness of the 2001 Licensee. Given McClellan's lack of sophistication in operating a commercial rail service venture, McClellan relied on Yolo, an experienced rail service provider, to determine which permits and approvals to conduct its operations under the 2001 License were required in order to activate the 2001 License. It was my understating that the Base's rail operations were not regulated by the STB and that Sacramento's acquisition of the Base (inclusive of the spur track) was not regulated by the STB. Notwithstanding the foregoing, I subsequently became aware that, "Yolo elected to render service on the Line as a rail carrier subject to the Board's jurisdiction." Opening at 3.

The 2001 License does not contain a specific requirement that Yolo abandon or discontinue service with the STB when the License terminated but does expressly provide that the right to operate under the 2001 License is limited to the "term" of such document. The 2001 License requires that "Prior to or upon the termination of this License Agreement howsoever, the

Licensee [Yolo] shall, at Licensee's sole expense, remove its equipment, personnel, and other property from Licensor's premises ...." Section 15.1 of the 2001 License. McClellan continues to contend that SERA, Yolo's successor in 2003, as a result of the 2001 License terminating in accordance with its negotiated provisions, must remove all of its property from the Park and extinguish any authority it obtained from the STB to provide common carrier service in the Park as all rights to operate on the described spur track were terminated.

SERA claims that it was granted "exclusive authority to operate" in the Park. Opening at 7. Under the Section 1.1 of the 2001 License, Yolo was granted "the exclusive license" to serve the Park. However, that "exclusive license" only existed as long as the 2001 License existed. Upon termination of the 2001 License on February 29, 2008, all rights under the 2001 License terminated as well.

On August 31, 2007, in accordance with the negotiated provisions of the 2001 License, McClellan notified SERA that the 2001 License would terminate on February 29, 2008. Thereafter, on October 11, 2007, McClellan issued a public Request for Proposal ("RFP") for a new operator of the Park, and invited four rail operators, including SERA and Patriot Rail Corp. ("Patriot Rail") to respond to the RFP. McClellan provided written notice to each participating bidder of the identity of the four bidders invited to participate in the RFP. After the three month RFP process was completed, Patriot Rail was announced the successful bidder. In an affidavit filed in the law suit between Patriot Rail and Sierra, Larry Kelley, President of McClellan, stated that if Patriot Rail had not won the bid, one of the other bidders (and not SERA) would have been selected. In accordance with the 2001 License Agreement, on February 29, 2008, SERA voluntarily ceased providing rail service in the Park and removed all of its locomotives, cars, and other tangible property from the Park.

Prior to the agreed upon termination date of the 2001 License on February 29, 2008, SERA advised McClellan that it was preparing to file a "cessation notice" with the STB. See Exhibit B, an email chain between Frank Myers, Senior Vice President McClellan and Mike Hart, President of SERA. SERA advised McClellan that it would provide a copy of any filings made, and later stated that "we are not required to make any filings." *Id.*

Consistent with the 2001 License and the assurances provided by Mike Hart, President of SERA, McClellan still believes that SERA is required to seek discontinuance authority from the STB.

I, Frank Myers, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this Verified Statement.

Frank Myers
Executed June 19, 2012

EXHIBIT A-2001 RAILROAD LICENSE AND OPERATING AGREEMENT

RAILROAD LICENSE AND OPERATING AGREEMENT

McClellan Park
Sacramento County, CA

This Railroad License and Operating Agreement ("License Agreement") is made and entered into as of the 6th day of February, 2001 ("Agreement Date"), by and between the **COUNTY OF SACRAMENTO**, a political subdivision of the State of California ("Licensor") and **YOLO SHORTLINE RAILROAD COMPANY**, a California Corporation ("Licensee")

RECITALS:

A McClellan Air Force Base is being closed by the U S Air Force and transferred to Sacramento County for redevelopment, and

B. Licensor, pursuant to separate documentation, has the right to enter into leases and other contracts with businesses and other enterprises for the redevelopment of McClellan Air Force Base (hereinafter also referred to as **"McClellan Park"**), and

C Licensor desires to provide for common carrier rail service to tenants of McClellan Park utilizing the existing trackage at McClellan Park, and

D Licensor desires to arrange for the necessary repairs and maintenance to the existing trackage and road crossings of the trackage so that such trackage becomes and remains operational in accordance with applicable regulations, and

E. Licensee is a common carrier railroad and is willing to make the necessary repairs to the trackage to make it operational and to operate and maintain such trackage to provide rail service to Licensor's tenants at McClellan Park, and

F Licensee will make such necessary agreements with the Union Pacific Railroad Company and other users of the trackage at McClellan Park so that railroad traffic may be interchanged, delivered, received, and otherwise handled in accordance with standard railroad practices.

AGREEMENT:

Now, therefore, it is mutually agreed by and between the parties hereto as follows:

1 LICENSOR GRANTS RIGHT

1 1 In consideration of the license fees to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the exclusive license (which is not coupled with an interest) to occupy, maintain, repair and operate all of the Railroad Facilities (as hereinafter defined) within McClellan Park, except (1) that trackage that is specifically specified for dismantling (see Section 5.1 below), and (2) trackage that is specifically leased to other parties by Licensor (see Section 4 1 below) ("License"). Exhibit A, attached hereto and made a part hereof, shows all trackage subject to this License Agreement. This License shall encompass all such trackage so designated in Exhibit A and in shall include the area within 15 feet of the centerline of each track, except where

roadways or buildings, as permitted by Licensor, reduce such distance to less than 15 feet. Also this License shall include all railroad signs, switch mechanisms, and other appurtenances associated with the trackage subject to this License Agreement, as designated on Exhibit A. All such trackage and appurtenances described on Exhibit A shall be as subject to this License Agreement are hereinafter defined as the "Railroad Facilities"

2 LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

2.1 The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain McClellan Park, including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, pipelines or other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee for compensation or damages, provided that Licensor shall, to the extent possible, notify the Licensee as soon as practicable of any planned or actual interference with the Railroad Facilities or Licensee's operation thereof, and Licensor shall take all practicable measures to minimize such interference.

2.2 The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees of the Licensor's property, and others), and the right of the Licensor to renew and extend the same, and, is made without covenant of title or for quiet enjoyment

2.3 Licensee hereby acknowledges that (1) it has satisfied itself with respect to the condition of the Railroad Facilities and the present and future suitability of the Railroad Facilities for Licensee's intended use; (2) that Licensee has made such investigations as it deems necessary with respect to the Railroad Facilities, is satisfied with reference thereto, and assumes a responsibility therefore as to Licensees occupancy and use thereof; and (3) neither the Licensor, nor any of Licensor's agents, has made any oral or written representations or warranties with respect to said Railroad Facilities other than as set forth in this License Agreement.

2.4 Notwithstanding any other provision of this Agreement to the contrary, Licensee acknowledges and agrees that Licensor's obligations under this Agreement are expressly contingent upon Licensor, in its sole discretion, determining that the requisite governmental approvals, authorizations and/or permits for the operation of the Railroad Facilities, which includes, but is not limited to, approvals from the United States Air Force (collectively, "Initial Approvals") have been issued. Licensor agrees to utilize its good faith efforts and due diligence to obtain the Initial Approvals on or before May 1, 2001; provided, however, the failure to do so on or before such date shall not be deemed a breach of either parties' obligations under this Agreement, but rather a failed condition precedent to Licensor's obligations hereunder. If the Initial Approvals have not been granted by May 1, 2001, this Agreement shall automatically terminate, and the provisions of Section 9 4 shall thereafter apply.

3. MAINTENANCE, AND OPERATION OF RAILROAD FACILITIES

3 1 Following the Agreement Date, using its best commercial efforts and its due diligence, the Licensee, at its expense, shall make all necessary repairs and install all necessary signage to a portion of the Railroad Facilities identified on Exhibit A attached hereto ("Primary Use Railroad Facilities") in accordance with the requirements of Section 3.2 below. The remaining portion of the Railroad Facilities not within the definition of Primary Use Railroad Facilities shall be referred to as the "Dormant Railroad Facilities" Licensee acknowledges and agrees that the Railroad Facilities marked as "Delayed Delivery" on Exhibit A attached hereto may be delivered to Licensee following the Agreement Date by Licensor upon Licensor's receipt of requisite approvals from the applicable governmental authorities for

the use thereof. Following such election by Licensor, the Delayed Delivery areas shall thereafter be within the definition of **"Railroad Facilities"** and a portion of the **"Primary Use Railroad Facilities."**

3.2 The Licensee, at its expense, but subject to Licensor's payment obligation set forth in Section 3.4 below, shall keep the Railroad Facilities in use in good repair and in a good and safe condition in conformity with the requirements of General Orders of the California Public Utilities Commission and the regulations of the Federal Railroad Administration (**"FRA"**), as applicable, and all other applicable laws, codes or regulations. Such trackage will be maintained to FRA class I or better. For purposes of this section, such repairs include, but are not limited to, tie replacements, joint bar replacements, replacements of bolts, spikes, broken tie plates and fittings, and repair or replacement of cracked or broken rails, frogs and/or switch parts, but does not include upgrades of rail, switches and other track material. In addition, Licensee shall keep the Railroad Facilities in a clean condition and keep all weeds mowed and trash and debris picked up and removed.

3 3 All track materials installed as part of the Railroad Facilities shall become the property of the Licensor. All materials removed from the Railroad Facilities as part of maintenance or repairs shall become the property of Licensee.

3 4 Notwithstanding the provisions of this Section 3, Licensor shall reimburse Licensee for its costs incurred pursuant to the provisions of this Section 3 allocable to the Dormant Railroad Facilities In this regard, on an annual basis during the term of this Agreement, Licensee shall prepare written budget (**"Dormant Track Budget"**), which sets forth Licensee's anticipated costs with regard to performing its obligations under this Section for the Dormant Railroad Facilities. Licensor's obligations to reimburse Licensee pursuant to this Section shall not become effective until Licensor has approved of the Dormant Track Budget, which approval shall not be unreasonably withheld, and Licensor's reimbursement obligation shall be limited to the amounts set forth on such approved budget notwithstanding Licensee's annual expenses. Licensee shall update the Dormant Track Budget on an annual basis. Following the approval of the Dormant Track Budget, if Licensor fails to reimburse Licensee for amounts owing under this Section 3.4 within fifteen (15) business days following Licensor's receipt of written request, Licensee may cease all maintenance and repair required with regard to the Dormant Railroad Facilities until such amounts are paid in full. Any amounts which are not paid when due shall accrue interest at (i) twelve percent (12 00%) per annum, or (ii) the maximum legal rate, whichever is less, until paid in full

3.5 At any time during the Term of this License Agreement, Licensee may request Licensor, in writing, to convert any Dormant Railroad Facilities into Primary Use Railroad Facilities. Licensor shall, within fifteen (15) business days following receipt of such request, approve or disapprove of such request. Until such time as Licensor has approved of such conversion, excepting Licensee's repair and maintenance obligations set forth in this Section, Licensee shall have no right to utilize the Dormant Railroad Facilities for any purpose. Upon a conversion of the Dormant Railroad Facilities to Primary Use Facilities, Licensor's obligations pursuant to Section 3.4 above shall cease.

4 TRACKAGE LEASED TO OTHER PARTIES BY LICENSOR.

4 1 Licensor may lease, from time to time, specific trackage at McClellan Park to third parties as part of a land or facility lease. Such trackage leased to third parties shall not be part of the Railroad Facilities as defined in this License Agreement. All trackage specifically leased by Licensor to third parties shall be separated from the trackage subject to this License Agreement by means of gates, fencing, signs, derails or similar means that prevent operations by such other parties on trackage licensed to Licensee or operations by Licensee on trackage leased or licensed to such other parties, unless and

except when such operations are conducted under a specific agreement between Licensee and such other party

4.2 Subject to the terms and conditions of this License Agreement, Licensee shall have the exclusive right to switch rail cars or other on-rail equipment of any type, and receive revenue therefor, between any trackage leased by Licensor to a third party(ies) and Licensee, any other railroad common carrier, or any other party.

5. RELOCATION OR REMOVAL OF RAILROAD FACILITIES.

5.1 The License herein granted is subject to the needs and requirements of the Licensor in the operation of McClellan Park and in the improvement and use of that property The Licensor, at its sole expense, may add to or remove any portion of the Railroad Facilities, or relocate them to such new location(s) as the Licensor may designate, whenever, in the furtherance of Licensor's needs and requirements, the Licensor shall find such action necessary. In such cases, Licensee shall provide Licensor with a fixed price quote for performing such work, and Licensor shall have the option of accepting Licensee's quote and have Licensee perform the work, or have another rail contractor perform such work. In the event that any railroad trackage is removed at McClellan Park, Licensee may designate and stockpile for future use all or a portion of such removed materials as is reasonably necessary for repairs and maintenance of the Railroad Facilities. All such work performed and installation of railroad trackage shall be in conformance to all requirements of the General Orders of the California Public Utilities Commission and regulations of the Federal Railroad Administration (FRA), as applicable, and all other applicable laws, codes or regulations.

5.2 All the terms, conditions and stipulations herein expressed with reference to the Railroad Facilities, so far as any new or relocated trackage is on McClellan Park, shall apply to the Railroad Facilities as so modified, changed or relocated within the contemplation of this Section.

6. MINIMIZE INTERFERENCE WITH LICENSOR'S TENANTS

6 1 The Railroad Facilities shall be operated in such a manner as to minimize interference with the use by tenants of the roadways, property and facilities of the Licensor, and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

7 LICENSE FEES.

7 1 The License Fees shall be dependent upon the railroad traffic. Licensee shall pay Licensor the following fees based on railcars received from the connecting carrier and delivered to tenants of McClellan Park or received from tenants of McClellan Park and delivered to the connecting carrier, when Licensee receives revenue from the connecting carrier under negotiated standard divisions, which amount is referred to as the "Railcar Division" (Licensee shall provide Licensor with a summary of its negotiated Railroad Division and shall update such summary on any adjustments to such amounts).

7.1 1 On the first 350 railcars each calendar year—No fee

7 1.2 On the 351st through 1000th railcar each calendar year— ten percent (10%) of the Railcar Division received by Licensee from the connecting carrier railroad

7 1 3 On the 1001st and greater railcars each calendar year—fifteen percent (15%) of the Railcar Division received by Licensee from the connecting carrier railroad

7.1.4 For all railcars received, for which Licensee is paid a special negotiated division (such as excess dimension or weight railcars) higher than standard, Licensor shall receive twenty percent (20%) of the Railcar Division received by Licensee.

7.1.5 All other incidental switching or operating fees (if any) shall accrue solely to Licensee (the parties acknowledge that the amounts anticipated to be received by Licensee pursuant to this Section 7.1 5 are minimal and if such assumption is incorrect and Lessee begins to receive significant funds from the services described in this Section 7 15 (defined as five percent (5.00%) or more of revenues generated at McClellan Park), the parties shall meet and agree upon an allocation share for Licensor

7.1.6 For all non-operating revenue (car storage fees or track sublicense fees) received by Licensee related to the trackage at McClellan Park, Licensee shall pay to Licensor fifty percent (50%) of such revenue.

7.2 On or before the last day of each month, Licensee shall determine the amounts payable arising from the preceding month, and shall pay such amount to the Licensor Licensee shall prepare a statement detailing the payments made Any adjustments shall be made as soon as practicable on subsequent statements. Licensee shall, upon reasonable request from Licensor, make available for inspection and copying all documents and receipts upon which the License fees are based.

8. TEMPORARY USE OF LAYDOWN SPACE

8.1 Licensee may make arrangements from time to time with a temporary shipper by rail for use of otherwise unused laydown space (open space next to railroad track) Licensee shall notify Licensor of each such use. If Licensor reasonably objects to any specific use of laydown space by Licensee or its shipper, Licensee shall discontinue that use of such laydown space as soon as practicable. Licensee shall pay to Licensor twenty percent (20%) of all revenue (if any) received by Licensee by such shippers for such use of such laydown space.

9 TERM AND TERMINATION.

9 1 This License Agreement shall be effective when fully executed, shall continue in full force and effect for a period of five (5) years and year to year thereafter ("Term"), unless otherwise terminated as provided herein.

9.2 This License Agreement may be terminated by either party upon notice in the event that Licensee cannot make commercially reasonable interchange and trackage rights agreements with Union Pacific Railroad Company for the interchange, delivery and receipt of cars at McClellan Park, a reasonable division of revenues, and trackage rights to move locomotives and non-revenue equipment between West Sacramento and McClellan Park.

9 3 If the Licensee does not use the right herein granted or the Railroad Facilities for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith terminate this License Agreement by written notice, provided however, that if such default cannot reasonably be cured with in thirty (30) days, Licensor shall not terminate this License Agreement if Licensee begins to cure the default within the thirty day notice period and proceeds diligently to complete such cure.

9 4 Notwithstanding any other provision of this License Agreement to the contrary, this License Agreement may be terminated, without cause, by written notice given by either party to the other on any date stated in such notice, not less, however, than six (6) months subsequent to the date which such notice shall be given, provided that, if Licensor terminates this License Agreement pursuant to this subsection or any other section of this License Agreement within five (5) years of the effective date of this License Agreement, Licensor shall reimburse Licensee for the unamortized (using the initial 5-year term as an amortization period) costs, including labor, material and overhead costs, incurred by Licensee under Section 3.1 hereof, which reimbursement obligation shall not, in any event exceed One Hundred Thousand and No/100ths ($100,000.00).

9 5 All obligations incurred by the Parties prior to the termination of this License Agreement shall be preserved until satisfied.

9 6 If this License Agreement is terminated pursuant to Section 9 2 or 9.3 above, Licensor shall not be obligated to reimburse Licensee for any of its costs incurred pursuant to this License Agreement.

10 INSURANCE.

10.1 The Licensee shall, at its own cost and expense, provide and procure General Public Liability and, as applicable, Workman's Compensation or Federal Employer's Liability Act (FELA) insurance This insurance shall be kept in force during the life of this License Agreement.

10 2 The General Public Liability insurance providing bodily injury, including death, personal injury and property damage coverage shall have a combined single limit of at least $5,000,000 each occurrence or claim and at all times an unimpaired aggregate limit of at least $5,000,000. This insurance shall contain broad form contractual liability covering the indemnity provisions contained in this License Agreement, coverage for construction or demolition work on or near railroad tracks, and name the Licensor as an additional insured. Such insurance coverage shall be subject to Licensor's prior written approval and Licensee shall provide Licensor with a certificate of such insurance prior to the execution of this License Agreement.

10.3 Workers' Compensation or FELA insurance shall cover the statutory liability as determined by the compensation laws of the State of California or FELA, as applicable, with a limit of at least $1,000,000.

10.4 In addition to the provisions of this Section 10, Licensee shall maintain the insurance and comply with the requirements set forth on Exhibit B attached hereto.

11 NOTICES

11 1 All correspondence, notices and other papers shall be delivered either in person or by certified or registered mail, postage prepaid, to the parties hereto at the following addresses:

General Manager
Yolo Shortline Railroad Company
341 Industrial Way
Woodland, CA 95776-6012

McClellan Business Park LLC
5241 Arnold Avenue
McClellan, CA 95652
Attention. Senior Vice President of Property Management and
General Counsel

12 CLAIMS AND LIENS FOR LABOR AND MATERIAL.

12.1 The Licensee shall fully pay, when due and before any lien shall attach to the Railroad Facilities, if the same may lawfully be asserted, for all materials joined or affixed to, and labor performed upon, the property of the Licensor in connection with the maintenance, repair, and operation of the Railroad Facilities, and shall not permit or suffer any mechanic's or materialman's or other lien of any kind or nature to be created or enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee agrees to indemnify, hold harmless, and defend, the Licensor and Licensor's property against and from any and all liens, claims, demands, liabilities, causes of action, costs, and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials or other things furnished. The provisions of this Section 12 shall survive the termination or expiration of the term of this License Agreement.

13. PROPERTY TAXES

13 1 The Licensee shall not be responsible or liable for any property or other taxes assessed on the Railroad Facilities by any governmental authority. Licensor shall indemnify, defend and hold Licensee harmless for any property taxes on the Railroad Facilities that are assessed to and/or paid by Licensee

14. INDEMNITY

14 1 As used in this Section, "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (1) injury to or death of persons whomsoever (including the Licensor's officers, agents and employees, the Licensee's officers, agents and employees, as well as any other person); and (2) damage to or loss or destruction of any property whatsoever (including Licensee's property, adjacent property and crops, the roadbed, tracks, equipment or other property of the Licensor, or property in its care or custody).

14.2 The Licensee shall indemnify, defend and hold harmless the Licensor from any Loss which is due to or arises from: (1) the operation, maintenance, repair, or use of the Railroad Facilities and appurtenances thereto, or any part thereof; or (2) Licensee's failure to comply with or perform any of the terms and conditions set forth in this License Agreement; except to the extent that the Loss is caused by the negligence or willful misconduct of the Licensor or a breach of an express material warranty of Licensor The provisions of this Section 14 shall survive the termination or expiration of the term of this License Agreement.

15 REMOVAL OF LICENSEE EQUIPMENT, PERSONNEL AND PROPERTY UPON TERMINATION OF LICENSE.

15.1 Prior to or upon the termination of this License Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove its equipment, personnel, and other property from Licensor's

premises and shall restore, to the satisfaction of the Licensor, such portions of such premises to as good a condition as they were in at the beginning of this License Agreement, excepting normal wear and tear If the Licensee fails to do the foregoing, the Licensor may do such work at the cost and expense of the Licensee.

:6 HAZARDOUS SUBSTANCES AND WASTES

16 1 For the purpose of this Section, "**Hazardous Materials**" shall mean any substance· (A) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance, pollutant or contaminant under any governmental statute, code, ordinance, regulation, rule or order, and any amendment thereto, including for example only and without limitation, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S C § 9601 et seq., and the Resource Conservation and Recovery Act, 42 U S C § 6901 et seq., or (B) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including for example only and without limitation, gasoline, diesel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon and urea formaldehyde foam insulation, and "**Hazardous Materials Laws**" shall mean all present and future governmental statutes, codes, ordinances, regulations, rules, orders, permits, licenses, approvals, authorizations and other requirements of any kind applicable to Hazardous Materials.

16 2 Licensee shall comply with all federal, state and local environmental laws and regulations in its occupancy, operation and maintenance of the Railroad Facilities. Without first obtaining the Licensor's written permission (which may be withheld in Licensor's sole discretion), Licensee shall not treat, or dispose of Hazardous Materials (as hereinafter defined) on the Railroad Facilities, and shall not transport or bring any Hazardous Materials onto McClellan Park, except such Hazardous Materials which have been approved by Licensor pursuant to the Hazardous Materials Handling Plan, by railcar, or transloaded to or from railcars. If such permission is granted (which may be withheld in Licensor's sole discretion), the Licensee shall obtain any necessary permits and identification numbers and provide the Lessor the identification numbers and copies of the permits Licensee shall assume all responsibility for and shall indemnify, defend and hold harmless Licensor against all costs and claims associated with a release or leak of any such Hazardous Materials, unless such event was caused by the negligence or willful misconduct of Licensor

16 3 In addition, Licensee shall not install any above ground or underground storage tanks without first obtaining the Licensor's written permission. If such permission is granted (which may be withheld in Licensor's sole discretion), the Licensee shall obtain any necessary permits, notify the proper authorities, and provide the Lessor with copies of such permits and notifications. Furthermore, Licensee shall assume all responsibility for and shall indemnify, defend and hold harmless Lessor against all costs and claims associated with a release or leak of any tank contents, unless such event was caused by the negligence or willful misconduct of Licensor

16.4 If Licensee knows, or has reasonable cause to believe, that a Hazardous Material has come to be located under or about McClellan Park, other than as specifically provided herein or as previously consented to by Licensor, Licensee shall immediately give Licensor written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such hazardous substance.

16.5 Licensee shall not be liable or responsible for any Hazardous Materials present at McClellan Park prior to the Agreement Date.

16 6 Licensee shall not release any Hazardous Materials on or at McClellan Park, including through any drainage or sewer systems. Licensee assumes all responsibility for the investigation and cleanup of any such release and shall indemnify, defend and hold harmless the Licensor and its property, its officers, agents and employees, for all costs, including environmental consultant and attorney fees and claims resulting from or associated with any such release. This provision shall continue in full force and effect regardless of whether this Lease is terminated pursuant to any other provision, or the Railroad Facilities are abandoned and vacated by the Licensee.

16.7 Licensee acknowledges and agrees that Licensor has disclosed that McClellan Park has contained and may continue to contain Hazardous Materials in violation of Hazardous Material Laws. Licensee hereby assumes all risk for and waives, to the fullest extent permitted by law, any and all claims, damages, liabilities, and expenses relating to any property damage, personal injury and/or adverse affect associated with the presence of Hazardous Materials at McClellan Park and any contact therewith by Licensee, its agents, employees, and/or subcontractors. Licensee, for itself and its agents, affiliates, successors and assigns, hereby waives, releases and forever discharges Licensor, its agents, affiliates, successors and assigns from any and all rights, claims and demands at law or in equity, whether known or unknown at the time of this License Agreement, which Licensee has or may have in the future, arising out of the matters set forth and disclosed in this Section concerning the presence of Hazardous Materials. Licensee hereby specifically waives the provisions of Section 1542 of the California Civil Code, which provides:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

_____
Licensee

16 8 Environmental Questionnaire, Reports. Prior to execution of this License Agreement, Licensee shall complete, execute, and deliver to Licensor an Environmental Questionnaire Disclosure Statement (the "**Environmental Questionnaire**"), in a form of Exhibit C attached hereto. For a period of fifteen (15) days following Licensor's receipt of the Environmental Questionnaire, Licensor shall have the right to approve or disapprove such document. The failure of Licensor to approve such document shall be deemed Licensor's disapproval thereof. Licensor's approval of the Environmental Questionnaire shall constitute approval for Licensee's use of the Hazardous Materials set forth therein in compliance with Hazardous Materials Laws and the Hazardous Materials Handling Plan. Licensee acknowledges that, in conjunction with Licensor's review of the Environmental Questionnaire, Licensor may require Licensee to comply with a "**Hazardous Materials Handling Plan,**" the approval of which by Licensor and Licensee is a condition precedent to each party's obligations hereunder (Licensee shall be responsible for the preparation of the draft Hazardous Materials Handling Plan). If Licensor and Licensee cannot reach agreement upon the provisions of the Hazardous Materials Handling Plan within ten (10) days following Licensor's receipt thereof, Licensor shall have the right to terminate this License Agreement by providing Licensee with written notice of such election, in which case the parties shall have no further obligations hereunder. Except as provided in this License Agreement, following approval of the Hazardous Materials Handling Plan, Licensee shall comply therewith throughout the Term. Unless approved in writing by Licensor, Licensee shall not be entitled to utilize any Hazardous Materials within the Premises. To the extent Licensee is permitted to utilize Hazardous Materials upon the Railroad Facilities, such use shall be limited to the items set forth in the Environmental Questionnaire, shall comply with Hazardous Materials Laws, and Licensee shall promptly provide Licensor with complete and legible copies of all the following environmental comments relating thereto. reports filed pursuant to any self-reporting requirements, permit applications, permits, monitoring reports, workplace exposure and

community exposure warnings or notices and all other reports, disclosures, plans or documents relating to water discharges, air pollution, waste generation or disposal, and underground storage tanks for Hazardous Materials; orders, reports, notices, listings and correspondence of or concerning the release, investigation of, compliance, cleanup, remedial and corrective actions, and abatement of Hazardous Materials; and all complaints, pleadings and other legal documents filed by or against Licensee related to Licensee's use, handling, storage or disposal of Hazardous Materials. If, in conjunction with Licensee's business operations at McClellan pursuant to this License Agreement, Licensee must commence the utilization of previously undisclosed Hazardous Materials, prior to the usage thereof, Licensee shall notify Licensor thereof, by written summary determining the scope of such usage and updating the Hazardous Materials Handling Plan to the extent required by such additional usage Such notice shall be captioned with the following: [Licensor's failure to respond within fifteen (15) days following receipt of this notice shall be deemed approval of this notice]. For a period of fifteen (15) days following Licensor's receipt of such notice, Licensor shall have the right to approve or disapprove of such documents which approval shall not be unreasonably withheld (provided such usage is consistent with Hazardous Materials Laws, the McClellan Use Documentation, and the requirements of applicable governmental authorities) The failure of Licensor to disapprove of such documents within such time period shall be deemed Licensor's approval thereof.

17. WAIVER OF BREACH.

17.1 Except as set forth in this License Agreement, the waiver by a party of the breach of any condition, covenant, or agreement herein contained to be kept, observed and performed by the other party shall in no way impair the right of the first party to avail itself of any subsequent breach thereof.

18 CONSENT.

18.1 Wherever the consent, approval, judgment or determination of a party is required or permitted under this License, that party shall exercise good faith and reasonable business judgment in granting or withholding such consent or approval or in making such judgment or determination and shall not unreasonably withhold or delay its consent, approval, judgment or determination.

19 SUBLEASE STATUS

19.1 Licensor, pursuant to the EDC Lease Agreement between Licensor, as Lessee, and the United States Air Force, as Lessor, dated August 13, 1998, as supplemented and/or amended ("**EDC Lease Agreement**"), and subject to Operating Agreement, as supplemented and/or amended ("**Operating Agreement**") between Licensor as "**Lessee,**" and the United States Air Force, as "**Air Force,**" is entitled to certain leasehold rights within McClellan Park. As a result of such tenancy pursuant to the EDC Lease Agreement, (i) the provisions of this License Agreement are junior, subordinate and subject to the terms and conditions of the EDC Lease Agreement, and (ii) this License Agreement is a "**Sublease**" in accordance with applicable law, statutes and ordinances. During the Term of this License Agreement, Licensor, using its commercially reasonable efforts, shall not violate the provisions of the EDC Lease Agreement. Subject to Section 9.4 of this License Agreement, the termination of the EDC Lease Agreement for any reason shall result in the automatic termination of this License Agreement, without liability to Licensee or Licensor, as a result of such termination, in which case the parties shall have no further obligations under this License Agreement Licensee shall not cause or take any action or inaction or cause or permit any Licensee representatives to take any action or which would constitute a default by Licensor under the EDC Lease Agreement, which occurrence would be deemed a default by Licensee under Section 22 of this License Agreement. Licensee acknowledges and agrees that pursuant to the provisions of, and in accordance with, the documentation described on Exhibit D attached hereto (collectively, "**McClellan Use Documentation**"), the Air Force, its agents,

employees, contractors and subcontractors, have the right to enter upon all areas within McClellan, which includes, but is not limited to, the Railroad Facilities, to implement hazardous waste remediation activities, whether imposed by law or regulatory agencies, and to perform various tasks, repairs, maintenance and obligations required by the McClellan Use Documentation Licensee acknowledges that some or all of these actions may interfere with Licensee's business operations within McClellan for the duration of such entrance. Such entrance shall not cause any form of liability, offset, abatement and/or claim against Licensor and/or the Air Force.

19 2 In accordance with the Licensor's Economic Development Conveyance Agreement with the United States Air Force ("**EDC Agreement**"), Licensor has the right to acquire fee title to McClellan, including the Railroad Facilities, which acquisition may or may not occur during the term of this License Agreement. Notwithstanding any other provision of this License Agreement to the contrary, in the event the Licensor does acquire fee title to McClellan during the term of this License Agreement, and as a result thereof, the EDC Lease Agreement terminates as such document relates to the Railroad Facilities, the parties hereto agree that this License Agreement shall remain in full force and effect as a direct contractual obligation between the Licensor and Licensee, Licensee shall recognize and attorn to the Licensor as its direct "Owner", and the Licensee agrees to enter into any further documentation with the Licensor to evidence the intent of the parties as set forth in this Section, provided, however, such further documentation shall not materially increase Licensee's obligations under this License Agreement.

19 3 Notwithstanding any other provision of this License Agreement to the contrary, Licensee acknowledges and agrees that the Licensor's right, title and interest in this License Agreement is transferable and assignable to any third party selected by the Licensor In this regard, upon written notice from the Licensor, Licensee agrees to execute any and all reasonable documentation to evidence such assignment as set forth in this Section, and the named Licensor shall be release from any and all future liability under this License Agreement; provided, however, such further documentation shall not materially increase Licensee's obligations under this License Agreement

20 ARBITRATION

20.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement and upon which the parties cannot agree, such question or controversy shall be submitted to and settled by a single arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party. The arbitrator so selected shall be a person with at least one-year exposure to the concepts of railroad operations and maintenance. If the parties are unable to agree on a single arbitrator, the party demanding such arbitration (the "**Demanding Party**") shall notify the other party (the "**Noticed Party**") in writing of such demand, stating the question or questions to be submitted for decision and nominating one similarly qualified arbitrator Within twenty (20) days after receipt of said notice, the Noticed Party shall appoint an arbitrator and notify the Demanding Party in writing of such appointment. Should the Noticed Party fail within twenty (20) days after receipt of such notice to name its similarly qualified arbitrator, the arbitrator for the Demanding Party shall select one for the Noticed Party so failing. The arbitrators so chosen shall select one similarly qualified additional arbitrator to compete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the Eastern District of California.

20 2 Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions as disclosed in said notice of demand for arbitration, shall give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If any arbitrator declines or

fails to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place After considering all evidence, testimony, and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

20.3 Each party shall pay the compensation, costs and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by the parties

20.4 The books, records, documents (however recorded or stored) of the parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator(s).

21. ENTIRE AGREEMENT

21.1 This document, and the exhibits attached hereto, constitute the entire agreement between the parties, all oral agreements being merged herein, and supersedes all prior representations, agreements, arrangements, understandings, or undertakings, whether oral or written, between or among the parties relating to the subject matter of this License Agreement that are not fully expressed herein.

22 MODIFICATION TO AGREEMENT

22.1 The provisions of this License Agreement may be modified at any time by agreement of the parties hereto, provided such modification is in writing and signed by all parties to this License Agreement Any agreement made after this date of this License Agreement and related to the subject matter contained herein shall be ineffective to modify this License Agreement in any respect unless in writing and signed.

23. LICENSE NOT TO BE ASSIGNED.

23.1 The Licensee shall not assign this License Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, which may be withheld in Licensor's sole discretion, and it is agreed that any transfer or assignment or attempted transfer or assignment of this License Agreement, whether voluntary, by operation of law or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this License Agreement

23.2 Licensee may enter into agreements with Union Pacific Railroad (or its successor) for trackage rights over any portion of the Railroad Facilities or for railcar storage. Subject to the terms and conditions of this License Agreement, Licensee may enter into agreements with any party for railcar storage or repairs. Pursuant to Section 8, Licensee may make agreements with shippers for use of temporary laydown space

24. SUCCESSORS AND ASSIGNS.

24.1 Subject to the provisions of Section 23 hereof, this License shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns

25 CHOICE OF LAW

25.1 This License Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California.

26 ACTS OF GOD, ETC.

26.1 Neither party shall be deemed to be in default of this License Agreement if any failure to meet any condition or to perform any obligation or provision hereof is caused by, a result of, or due to strikes, insurrections, acts of God, or any other causes beyond the party's control.

27 LIMITATION ON LIABILITY. The Licensee agrees that the obligations incurred by the Licensor under this License Agreement shall not constitute personal obligations of the members, partners, joint venturers, directors, officers, trustees, employees, policyholders or any other principals or representatives of Licensor. Licensee further agrees that its recourse against the Licensor under this License Agreement (including, without limitation, with respect to Licensor's indemnity of Licensee) shall be strictly limited to the Licensor's interest in the Rail Facilities, and that the Licensee shall have no recourse to any other asset of the Licensor, or of any member, partner, joint venturer, director, officer, trustee, employee, policyholder or any other principal or representative of the Licensor for the satisfaction of any of the Licensor's obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be executed as of the date first herein written.

LICENSEE:

YOLO SHORTLINE RAILROAD COMPANY, a California corporation

By: _____
David Magaw
President

Date: _____

LICENSOR:

COUNTY OF SACRAMENTO, a political subdivision of the State of California

By _____

Name: _____

Its: _____

Date. _____

WITNESS:

_____

Date: _____

EXHIBIT B-EMAIL EXCHANGE

From: Michael Hart
Sent: 02/05/2008
To: Frank Myers; dmagaw@att.net
Cc: Jay Heckenlively; Torgny Nilsson
Bcc:
Subject: RE: Rail RFP

Frank-
I have received confirmation from counsel that we are not required to make any filings regarding the Patriot action.

Please confirm if and when you reach a final agreement with Patriot.

Best wishes,
Mike Hart
Sierra RR

Michael Hart wrote:

Frank-
We will be happy to provide you with a copy of any filings we make. Please let us know when and if you reach a final agreement with Patriot.

Best wishes,
Mike Hart
Sierra Railroad

Frank Myers wrote:

Mike -

When we spoke a couple weeks ago you were preparing to file the cessation notice with the surface transportation board. Can you please provide a copy for our records? Thank you.

Frank Myers
Senior Vice President
McClellan Park / Stanford Ranch
Phone: (916) 570-5303
Mobile: (916) 284-8826
Fax: (916) 568-2848
From: Michael Hart [mailto:mg.hart@att.net]
Sent: Tuesday, January 08, 2008 12:33 PM
To: Frank Myers; dmagaw@att.net
Cc: Larry Kelley; Jay Heckenlively; Torgny Nilsson
Subject: Re: Rail RFP

Dear Frank,
We were disappointed to hear that we were not your final choice to continue to provide rail

From: Michael Hart
Sent: 02/04/2008
To: Frank Myers; dmagaw@att.net
Cc: Jay Heckenlively
Bcc:
Subject: RE: Rail RFP

Frank-
We will be happy to provide you with a copy of any filings we make. Please let us know when and if you reach a final agreement with Patriot.

Best wishes,
Mike Hart
Sierra Railroad

Frank Myers wrote:

Mike -

When we spoke a couple weeks ago you were preparing to file the cessation notice with the surface transportation board. Can you please provide a copy for our records? Thank you.

Frank Myers
Senior Vice President
McClellan Park / Stanford Ranch
Phone: (916) 570-5303
Mobile: (916) 284-8826
Fax: (916) 568-2848
From: Michael Hart [mailto:mg.hart@att.net]
Sent: Tuesday, January 08, 2008 12:33 PM
To: Frank Myers; dmagaw@att.net
Cc: Larry Kelley; Jay Heckenlively; Torgny Nilsson
Subject: Re: Rail RFP

Dear Frank,
We were disappointed to hear that we were not your final choice to continue to provide rail operations at McClellan Business Park . We believed that our favorable relations with our Class I partners, and our excellent relations with McClellan's tenants added great value to our proposal. We also believed that Morrison & Company's plan to make a major capital investment in the operation at McClellan coupled with their interest in McClellan's airport facilities, would have added a great deal to our remaining the operator there. Most importantly, we were certain that having the same operator for the Port of Sacramento and McClellan's rail facilities could open enormous warehousing opportunities, those are made impossible with three railroads involved in such a short move. We felt we had a good proposal, and had looked forward to handing over the operation to a well-financed partner who would center their operations at McClellan.

I would appreciate it if you could tell me if we were your second choice. Contract

negotiations take time, as will any negotiations with UP and BNSF, and I would like to know if we should position our railroad assets that are currently at McClellan in such a manner as to keep them available to McClellan if needed. Otherwise, we will need reposition our key team members and equipment from McClellan to other railroad operations. I have copied Torgny Nilsson on this message and would appreciate it if he could be your principal point of contact for any correspondence regarding the transition, copying Dave Magaw as well on any e-mails.

We will continue to provide excellent service until the end of our agreement and wish you all the best in your continued expansion of McClellan Park.

Best wishes,

Mike Hart
President, CEO
Sierra Railroad Company

Frank Myers wrote:
Dave and Mike,
We'd like to thank you for your response to the McClellan Park Rail Operations RFP. We gave your proposal a great deal of consideration, and appreciate the time you put into the response. Your potential transaction with Morrison and Company along with the years Sierra Northern / Yolo spent as the rail operator were both factors in our decision and made the decision more difficult, but ultimately we chose a different service provider. Thank you for the work you and your team put into the project over the years. We appreciate that effort and look forward to your cooperation over the next two months as we transition to Patriot Rail, who we selected as the shortline operator. Please let me know who your point of contact will be for the transition.
Feel free to contact me if you have any questions.

Frank Myers
Senior Vice President
McClellan Park / Stanford Ranch
Phone: (916) 570-5303
Mobile: (916) 284-8826
Fax: (916) 568-2848

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This email has been scanned by the MessageLabs Email Security System.
For more information please visit http://www.messagelabs.com/email

EXHIBIT 2-VERIFIED STATEMENT OF FRANK MCGOWAN

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. NOR 42133

SIERRA RAILROAD COMPANY AND SIERRA NORTHERN RAILWAY
v.
SACRAMENTO VALLEY RAILROAD COMPANY, LLC
MCCLELLAN BUSINESS PARK, LLC
AND COUNTY OF SACRAMENTO

VERIFIED STATEMENT OF RICHARD MCGOWAN

My name is Richard McGowan. I am General Manager of the Sacramento Valley Railroad Company, LLC ("SAV") and am charged with operating SAV under the Railroad License and Operating Agreement dated as of February 27, 2008 (the "2008 License") between SAV and McClellan Business Park, LLC ("McClellan").

McClellan has not interfered with SAV's operation in the McClellan Business Park (the "Park") pursuant to the 2008 License or in any other way. SAV has not received service complaints from the shippers in the Park. SAV has not received any requests from SERA to develop a protocol to operate jointly in the Park.

I, Richard McGowan, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Richard McGowan
Executed June 18, 2012